

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES D. PAHOUNDIS,

Petitioner,

CASE NO. 2:08-cv-671; 09-cv-54
JUDGE GRAHAM
MAGISTRATE JUDGE KEMP

v.

EDWIN VOORHIES, Warden,
NOBLE CORRECTIONAL INSTITUTION,

Respondent.

OPINION AND ORDER

On June 30, 2009, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant consolidated petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed as barred by the one-year statute of limitations under 28 U.S.C. §2244(d). Although the parties were advised of the right to object to the Magistrate Judge's *Report and Recommendation*, and of the consequences of failing to do so, petitioner has filed no objections. The Court notes that the docket indicates that notice of the Magistrate Judge's *Report and Recommendation* was returned, as no longer at that address. See Doc. No. 17. However, petitioner has an obligation to keep the Court advised of his whereabouts.

Respondent has filed objections to the Magistrate Judge's *Report and Recommendation*. Respondent objects solely to the Magistrate Judge's order granting petitioner's March 20, 2009, unopposed motion to amend the petition to include new claims. Respondent complains that petitioner's March 20, 2009, motion to amend the petition with new claims

likewise is time barred under *Mayle v. Felix*, 545 U.S. 644, 650 (2005)(holding that an untimely amended petition does not “relate back” to an initial timely filed petition where it asserts new grounds for relief supported by facts that differ in both time and type from the original pleading.) However, respondent did not oppose petitioner’s motion to amend his habeas corpus petition with new claims, and thereby arguably has waived such affirmative defense as it relates to petitioner’s motion to amend the petition with new claims. *See Day v. McDonough*, 547 U.S. 198 (2006). Further, petitioner appears to assert in his motion to amend the petition the same claims he raised in his initial petition and, as discussed by the Magistrate Judge, all of those claims, in any event, are time-barred. Therefore, respondent’s objections are **OVERRULED**.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review of the Magistrate Judge’s *Report and Recommendation*. For the foregoing reasons, and for the reasons discussed therein, respondent’s objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. Respondent’s July 2, 2009, motion to dismiss, Doc. No. 15, is **DENIED**, as moot. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: July 21, 2009